

## REMARKS

This is intended as a full and complete response to the Office Action dated July 16, 2004, 2004, having a shortened statutory period for response extended one month set to expire on November 16, 2004. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-39 remain pending in the application and are shown above. Claims 1-10, 14-23, 25-29, and 31-38 are rejected and claims 11-13, 24 and 30 stand objected to but are indicated to be allowable by the Examiner. Claims 10, 23, 31-35 and 38 are cancelled. Claims 12 and 15 are amended to correct matters of form. Claims 1, 11, 13, 18, 24, 25, 30 and 36 are amended to clarify aspects of the invention. New claim 39 has been added. Reconsideration of the rejected claims is requested for reasons presented below.

### Drawings

Applicants have amended the drawings in response to the Examiner's comments. No new matter has been added, however. FIG. 8 has been amended to correct the reference number related error specified by the Examiner. In addition FIG. 3A has been added to sheet 3/8 to further clarify aspects of the invention and to respond to the Examiner's comments.

### Specification

The disclosure is objected to because the brief description of the drawings failed to provide a description for Figure 1. Applicants have amended the specification and added a brief description for Figure 1 in accordance to the Examiner's comments.

### Claims Rejections Under 35 U.S.C. § 102

Claims 1, 6-7, 10, 18-19, 23, 25, and 36 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Porter* (2,234,831). The Examiner states that Porter discloses a tamper with an elongated handle 9 with a ball portion 7, a collar 11, a tamping base 1, and a housing member formed by the central cylindrical boss 5 (FIG. 1). The Examiner further states that the housing member 5 comprises conventional threads that form V-shaped mating or clamping surfaces.

Claims 1, 3, 4, and 6-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by *McNamara* (3,739,562). The Examiner states that *McNamara* discloses a garden tool 10 that is a combination rake, hoe and tamping device wherein the tool consists of a handle attached to a tool by means of an angularly adjustable joint (Col 1, lines 1-15; FIGs. 1-5). The Examiner further states that the adjustable joint permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool. The tool comprises an elongated handle 11 having a collar attached to the distal end of the handle.

In response to the above rejections, Applicants have amended independent claims 1, 18, 25 and 36 to further clarify aspects of the invention. Specifically, Applicants have amended these claims to highlight the clamping surfaces. *Porter* or *McNamara*, either alone or in combination, do not teach, show or suggest at least two clamping surfaces formed 90 degrees apart, the at least two clamping surfaces each matable with the collar to retain the handle in a first or second position relative to the base as recited in independent claims 1, 18 and 25. Additionally, *Porter* or *McNamara*, either alone or in combination, do not teach, show or suggest a housing member disposed on the upper surface of the tamping base, wherein the housing member includes at least two clamping surfaces formed 90 degrees apart and a joint configured to pivotally receive an elongated handle, as recited in independent claim 36.

#### Claim Rejections Under 35 U.S.C. § 103

Claims 2, 5, 9-10, 15-16, 18-23, 25-29, and 31-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *McNamara* (3,739,562) as applied to claim 3 above in view of *Mazon* (5,507,051).

Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *McNamara* (3,739,562) as applied to claim 1 above in view of *Bator* (2,994,262).

Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *McNamara* in view of *Mazon*, as applied to claim 16, and further in view of *Carmien* (RE. 32,364).

All of the claims listed above stand rejected under 35 U.S.C. § 103; *McNamara* is a cited reference that is relied upon for each of the rejections listed.

However, all of the claims depend from currently amended independent claims 1, 18, 25 and 36. Therefore, Applicants believe that these claims are allowable for at least the same reasons listed above with reference to independent claims 1, 18, 25 and 36.

Allowable Subject Matter

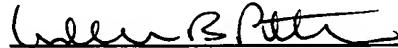
Claims 11-13, 24, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants acknowledge the allowable subject matter, but have elected to not rewrite these claims in independent form at this time. However, it should be noted that Applicants have amended the independent claims (1, 18 and 25) from which these claims depend to incorporate the further limitations. Accordingly, Applicants believe that the amended independent claims 1, 18, 25 and 36 (and their respective dependent claims) are allowable for at least the same reasons as stated above.

Conclusion

In conclusion, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest the invention as claimed.

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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**IN THE DRAWINGS:**

Please replace sheets 3/8 and 8/8 with the attached sheets containing figures 3, 3A and amended figure 8.

**Attachment:      Replacement Sheets**  
**Annotated Sheets Showing Changes**



3/8

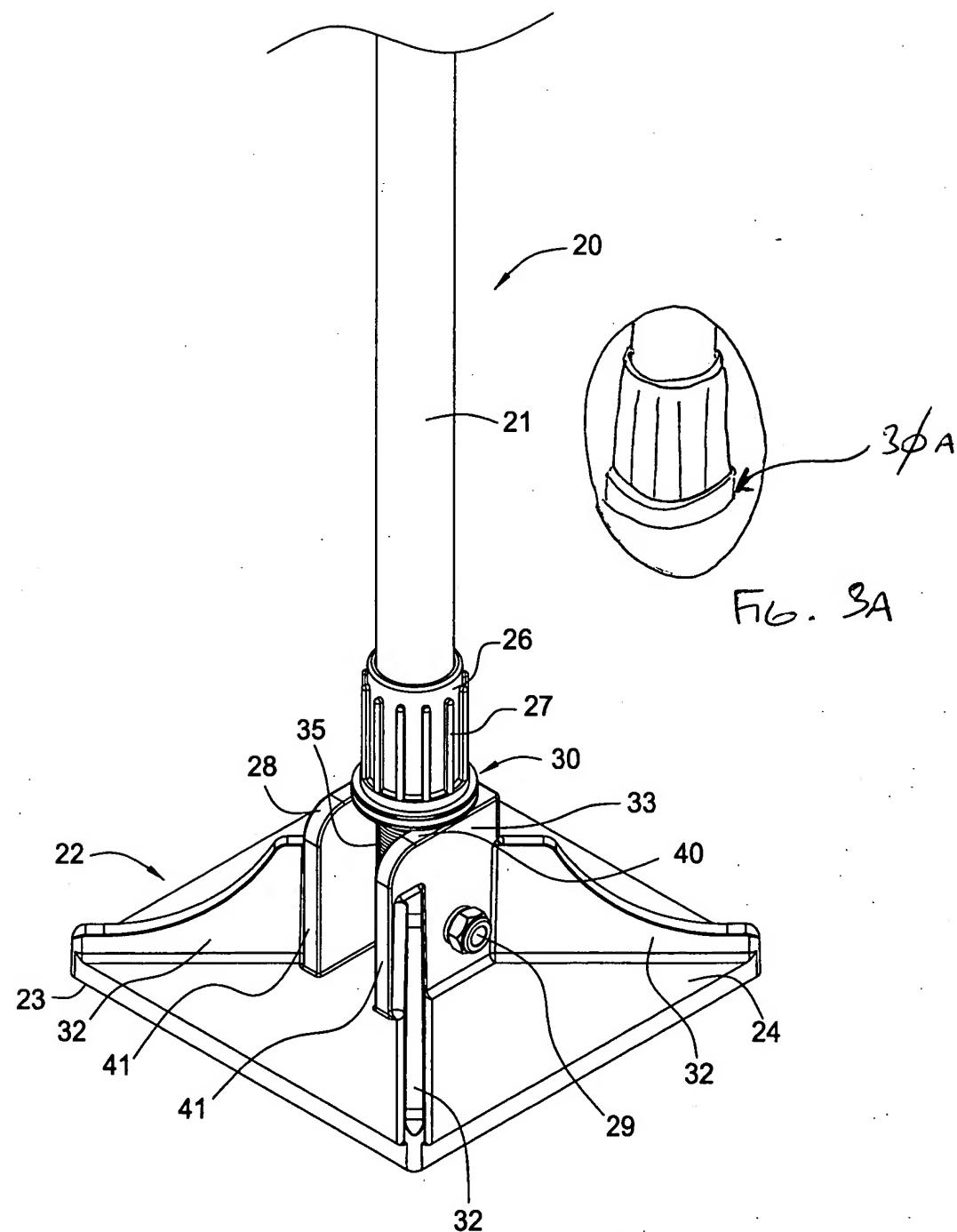


FIG. 3

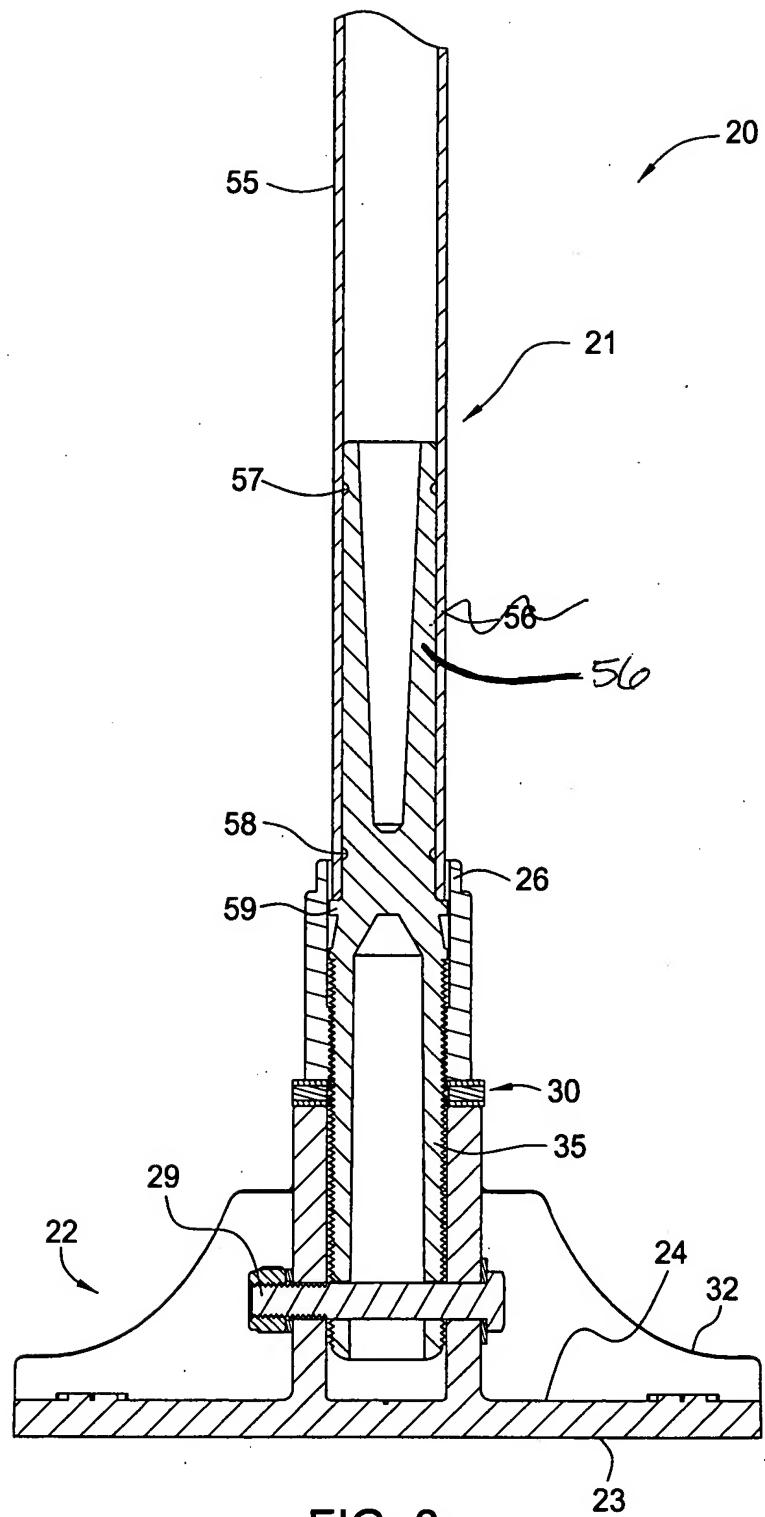


FIG. 8